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State of Utah

DEPARTMENT OF NATURAL RESOURCES Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer/Division Director

MAY 28 2014

ORDER OF THE STATE ENGINEER

For Permanent Change Application Number 57-24 (a39050)

and

For Permanent Change Application Number 57-2700 (a39051)

Permanent Change Application Number 57-24 (a39050) in the name of Sandy City Corporation, was filed on May 23, 2013, to change the point of diversion, place of use, and uses of 0.8776 cubic foot per second (cfs) of water as evidenced by Water Right Number 57-24. Heretofore, the water has been diverted from a surface source located: South 836 feet and East 4518 feet from the W $\frac{1}{4}$ Corner of Section 7, T3S, R2E, SLB&M (Little Cottonwood Creek). The water has been used for year-round municipal purposes within the service area of Taylorsville-Bennion Improvement District.

Permanent Change Application Number 57-2700 (a39051) in the name of Sandy City was filed on May 23, 2013, to change the point of diversion, place of use, and uses of 0.3524 cubic feet per second (cfs) of water as evidenced by Water Right Number 57-2700. Heretofore, the water has been diverted from a surface source located: South 836 feet and East 4518 feet from the W $\frac{1}{4}$ Corner of Section 7, T3S, R2E, SLB&M. The water has been used for year-round municipal purposes within the service area of the City of West Jordan.

Hereafter, both change applications together propose to divert 1.23 cfs of water from two points on Little Cottonwood Creek located: (1) South 845 feet and East 4503 feet from the W $\frac{1}{4}$ Corner of Section 7, T3S, R2E, SLB&M; and (2) South 358 feet and West 715 feet from the NE Corner of Section 11, T3S, R1E, SLB&M. The water is to be used for year-round municipal purposes within the service areas of Sandy City and Salt Lake City¹.

Notice of the application was published in the Deseret News on July 4 and 11, 2013. No protests were received.

A letter of support for these change applications was submitted by Metropolitan Water District of Salt Lake & Sandy. The proposed points of diversion described in the change applications are for diversion intakes into its treatment and distribution facilities. Hereafter, diversion number one describes the location of the Murray Power penstock intake and diversion number two describes the MWDSLs intake screen (Creekside diversion).

¹It is noted that the original submitted application indicated the use with the service area of Sandy City. On June 4, 2013, the application was changed by verbal communication with applicant to reflect the service areas of Sandy City, Salt Lake City, and Jordan Valley Water Conservancy District. On June 12, 2013, the applicant again asked that the application be modified to reflect the service areas of just Sandy City and Salt Lake City.

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These two change applications together are based on three decree² awards as described below:

- A. A primary decree award to the Brady Number One ditch, with a priority date of 1848, having a maximum diversion up to 0.41 cfs.
- B. A first surplus decree award to the Brady No. 1 ditch, with a priority date of 1856, having a maximum diversion up to 0.16 cfs.
- C. A third surplus decree award to the Brady No. 1 ditch, with a priority date of 1856, having a maximum diversion up to 0.66 cfs.

The water right file records of this Division include five water rights that pertain to these three awards in the decree.³ The files are Water Right Numbers 57-24, 57-2700, 57-8739, 57-9003, and 57-9018. The following is a discussion of each file and why it was created:

- a. Water Right File Number 57-24 was created as a result of a signed Statement of Water User's Claim, dated February 18, 1975. The claim contains a reference that it is based on a 71.35% interest in the primary and surplus decree awards to the Brady Ditch No. 1. The ownership reflects Taylorsville-Bennion Improvement District. In 2012 a Report of Water Right Conveyance was submitted to document that this right has been received by Sandy City in a trade. Change Application a39050 is filed on this water right file.
- b. Water Right File Number 57-2700 was created as a result of a signed Statement of Water User's Claim, dated March 7, 1975. The claim contains a reference that it is based on a 28.65% interest in the primary and surplus decree awards to the Brady Ditch No. 1. The ownership reflects the City of West Jordan. In 2012 a Report of Water Right Conveyance was submitted to document that this right has been received by Sandy City in a trade. Change Application a39051 is filed on this water right file.
- c. Water Right File Number 57-8739 was created as a result of the filing of Permanent Change Application a1250. The change was filed and approved in 1934 to change the point of diversion, place and nature of use of 1.23 cfs of water (the maximum flow diversion of all primary and surplus decree rights). A Certificate of Permanent Change was issued and dated October 23, 1958. The

²Union & East Jordan Irr. Co. v. Richards Irr. Co., et al.; slip op. at paragraph 28 (Third Judicial District Court Salt Lake County, June 16, 1910).

³Union & East Jordan Irr. Co. v. Richards Irr. Co., et al.; slip op. at paragraph 28 (Third Judicial District Court Salt Lake County, June 16, 1910).

certificate described the water will be diverted from Little Cottonwood Creek into a pipeline to the Murray City Power Plant where it is then passed through the power plant and discharged to a distribution line of the West Side Water System. The water was then used as a supplemental supply for the year-round domestic use of 350 families. The documents in support of change a1250 describe the historical use from the Brady Number One ditch as the irrigation of 6.4 acres during the normal irrigation season and intermittently for domestic purposes during the entire year.

- d. Water Right File Number 57-9003 was created as a result of this Division assigning water right file numbers to awards in the *Little Cottonwood Decree*.⁴ This water right file number represents the Brady Number One primary award for a maximum diversion of up to 0.41 cfs.
- e. Water Right File Number 57-9018 was created as a result of this Division assigning water right file numbers to awards in the *Little Cottonwood Decree*.⁴ This water right file number represents both surplus awards to the Brady No. 1 ditch. The surplus awards include a first surplus decree award to the Brady No. 1 ditch, with a priority date of 1856, having a maximum diversion up to 0.16 cfs and a third surplus decree award to the Brady No. 1 ditch, with a priority date of 1856, having a maximum diversion up to 0.66 cfs.

For clarity in relation to these five files, with the issuance of this Order of the State Engineer, Water Right File Numbers 57-24, 57-2700 and 57-8739 have been modified in the written record and on the water right database to reflect they have been "RENUMBERED". All documents from these files will be combined into Water Right File Numbers 57-9003 (reflecting the primary decree award) and 57-9018 (reflecting the surplus decree awards). All future correspondence and actions in regard to the Brady Number One ditch awards should be referenced to these two water right files. A copy of this Order of the State Engineer will be placed on all five file folders for future reference of this clarification of the Division's documentation.

In evaluating applications that propose to change the nature of use of a water right, the State Engineer believes it is appropriate to examine the rates and amounts of hydrologic depletion associated with the historical water use as compared to the proposed use to assure that there is no enlargement of the underlying water right. In this case, it is believed that the historical water uses would have incurred a hydrologic depletion for the irrigation of 6.4 acres of 13.57 acre-feet. This is due to irrigation in the Salt Lake Valley typically evaluated at 5.0 acre-feet per acre

⁴Union & East Jordan Irr.Co. v. Richards Irr. Co., et al.; slip op. at paragraph 28 (Third Judicial District Court Salt Lake County, June 16, 1910).

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diversion with a 42.4% depletion rate.⁵ For other rights in this area, the irrigation season has typically been estimated to be April 1 to October 1. The supporting historical documents previously mentioned that this water was also used intermittently for domestic purposes during the entire year. For purposes of quantifying the historical limits of this change, it is assumed the primary award for 0.41 cfs continued to be diverted during the winter months for domestic dipping rights. The domestic use during the irrigation season is assumed to have occurred intermittently with the diversion made for irrigation. Diverting 0.41 cfs for 181 days during the winter months would, however, produce approximately 147.16 acre-feet of water. Typically a domestic use would deplete approximately 20% of the total water diverted; therefore, this winter use may have an associated hydrologic depletion of 29.43 acre-feet of water annually. For lack of more definite historical information, it seems reasonable the historical water uses would have incurred a total hydrologic depletion of 43.0 acre-feet annually. If precautions are observed, these changes can be made.

In evaluating the various elements of the underlying rights, it is not the intention of the State Engineer to adjudicate the extent of these rights, but rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and/or no enlargement occurs.

It is, therefore, **ORDERED** and Permanent Change Application Number 57-24 (a39050) is hereby **APPROVED** subject to prior rights and the following conditions:

- 1) The diversion of water under these change applications for municipal uses by Sandy City and Salt Lake City is limited to the maximum diversions of 0.41 cfs for a primary creek right, 0.16 cfs for a first surplus creek right, and 0.66 cfs for a third surplus creek right. To ensure no enlargement of the underlying rights, the applicant must maintain records sufficient to demonstrate that the depletion from its uses under this application do not exceed 43.0 acre-feet annually.
- 2) To accommodate the approval of this Permanent Change Application, the use of 1.23 cfs of water at the historical point of diversion and place of use must cease.
- 3) All diversions of water under this application shall be made under the direction of the Little Cottonwood Creek Co-commissioners and the applicant shall maintain diversion records as needed by the Co-commissioners to ensure no enlargement of the underlying right occurs.

⁵Consumptive Use of Irrigated Crops in Utah," Research Report 145, Utah Agricultural Experiment Station, Utah State University, Logan, Utah, October 1994, Table 25" Salt Lake Ct NWSFO AP Station.

- 4) The applicant(s) shall install and maintain measuring and totalizing recording devices to meter all water diverted from all sources pertaining to this application and **shall annually report this data to the Division of Water Rights Water Use Program.**
- 5) Inasmuch as this application seeks to divert water from numerous points of diversion, it is necessary that detailed information be provided to the State Engineer to show which sources of supply are actually developed and used and the extent of their usage under this application. Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicant must identify every source of water used under this application and the amount of water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.

The State Engineer has statutory responsibility to create and maintain water right records based on an administrative process outlined in statute. The State Engineer is not authorized by statute to adjudicate water right title or the validity of established water rights. It is noted that failure to exercise a water right within the statutory period could render all or a portion of a water right invalid through forfeiture. Parties who wish to challenge the validity of a water right are advised that a declaration of forfeiture is a judicial action and the courts are available to pursue such suits. (UCA 73-1-4).

As noted, this approval is granted subject to prior rights. The applicant shall be liable to mitigate or provide compensation for any impairment of or interference with prior rights as such may be stipulated among parties or decreed by a court of competent jurisdiction.

The applicant is strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicant to determine the applicability of and acquisition of such permits. Once all other permits have been acquired, this is your authority to develop the water under the above referenced application which under Sections 73-3-10 and 73-3-12, Utah Code Annotated, 1953, as amended, must be diligently prosecuted to completion. The water must be put to beneficial use and proof must be filed on or before **May 31, 2019**, or a request for extension of time must be acceptably filed and subsequently approved; otherwise the application will be lapsed. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to, or use of land or facilities not owned by the applicant.

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Proof of beneficial use is evidence to the State Engineer that the water has been fully placed to its intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location, uses, and extent of your water right. Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicant must identify every source of water used under this application and the amount of water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.

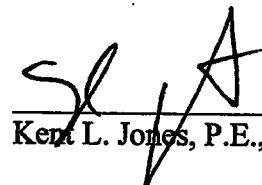
Failure on your part to comply with the requirements of the applicable statutes may result in the lapsing of this permanent change application.

It is the applicant's responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership.

Your contact with this office, should you need it, is with the Utah Lake/Jordan River Regional Office. The telephone number is 801-538-7240.

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-402, and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Order. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 28th day of May, 2014.

 BOND CLAYTON FOR
Kent L. Jones, P.E., State Engineer

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Mailed a copy of the foregoing Order this 28th day of May, 2014 to:

Sandy City Corporation
10000 Centennial Parkway, Suite 241
Sandy, UT 84070

Tim O'Hara, Co-River Commissioner
1501 South 500 East
Salt Lake City, UT 84105

Max Reese, Co-River Commissioner
Tanner Ditch
977 East 5600 South
Salt Lake City, UT 84121

Division of Water Rights
Distribution Section
c/o Mike Silva
LITTLE COTTONWOOD CREEK

Division of Water Rights
Water Use Program

BY: 
Sonia R. Nava, Applications/Records Secretary